

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JOYCE MARTINEZ,

Plaintiff,

v.

OPTUM SERVICES, INC.,

Defendant.

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Civil Action No. 3:20-CV-01138-X

MEMORANDUM OPINION AND ORDER

Before the Court is defendant Optum Services, Inc.'s (Optum) motion for summary judgment. [Doc. No. 38]. After careful analysis under the *McDonnell Douglas* framework, the Court has determined that Optum is not entitled to summary judgment on Joyce Martinez's claims. As to the age and sex discrimination claims and the retaliation claim, there is some evidence of pretext because Optum's proffered explanation is its anti-retaliation policy, but that policy refers only to retaliation against complaints of harassment based on legally protected characteristics such as race, national origin, and sex. [Doc No. 44 at 2 N. 2]. In short, the policy Optum cites does not cover Martinez's conduct. Accordingly, Optum's motion for summary judgment is DENIED.

Also before the Court is Optum's motion to strike [Doc. No. 48]. The Court DENIES in part and FINDS AS MOOT in part this motion. Insofar as Optum moves to strike entire deposition transcripts, the Court DENIES this motion. In her brief, Martinez cited to specific portions of the depositions, and the Court only referred to

the portions cited to by the parties in considering the summary judgment motion. Insofar as Optum seeks to strike Martinez's recounting of comments allegedly made by Scott Martin in Martinez's presence as hearsay, the Court DENIES the motion. The comments that Martinez says Martin made are opposing party statements under Fed. R. Evid. 802(d)(2). Because the Court would deny Optum's motion for summary judgment even if it struck the remaining evidence called into question by this motion, the Court FINDS AS MOOT the remainder of Optum's motion to strike.

The Court also FINDS AS MOOT Martinez's motion to strike [Doc. No. 46] and Martinez's motion for oral argument. [Doc. No. 50].

IT IS SO ORDERED this 31st day of December, 2021.

A handwritten signature in black ink, appearing to read "Brantley Starr", written over a horizontal line.

BRANTLEY STARR
UNITED STATES DISTRICT JUDGE